

EXHIBIT A

1 SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

2
3 NATIONAL COLLEGIATE STUDENT)
4 LOAN TRUST 2007-2,)
5 Plaintiff,)
6 vs.) 19-2-09402-8 KNT
7 OSURE BROWN and TOMMY BROWN,)
8 Defendants.)
9

10 Consolidated with:

11 19-2-09403-6 KNT; 19-2-09404-4 KNT; 19-2-09405-2 KNT;
12 19-2-09406-1 KNT; 19-2-09407-9 KNT; 19-2-09408-7 KNT;
13 19-2-09409-5 KNT; 19-2-09410-9 KNT; 19-2-09411-7 KNT
14

15 VERBATIM REPORT OF PROCEEDINGS
16 BEFORE THE HONORABLE
17 NICOLE GAINES-PHELPS
18

19 OCTOBER 24, 2019
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22
23

24 TRANSCRIBED FROM RECORDING BY:
25 CHERYL J. HAMMER, RPR, CCR 2512

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A P P E A R A N C E S

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(BEGINNING OF TRANSCRIPTION)

(Proceedings begin at 3:33 p.m.)

FEMALE VOICE: Superior Court is now in session. The Honorable Judge Nicole Gaines-Phelps presiding.

THE COURT: Good afternoon, everyone. Welcome to Department 14. Okay. We are here on National Collegiate Student Loan Trust versus Braum -- versus Brown; Cause Number 19-2-09402-8.

I'll have counsel introduce themselves. And for plaintiff.

MR. CHEUNG: Matt Cheung, for the plaintiff.

THE COURT: And for defendants.

MS. HENRY: Christina Henry, attorney for defendants Osure Brown and Tommy Brown.

THE COURT: Thank you. So let me begin by saying, I know that there are -- well, I found out, essentially today, that there was a motion for -- from plaintiffs to continue that was supposedly set last week.

For some reason, something happened with the working copies. Not quite sure what. I did

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1 read and review that, though, and so I am ready to
2 address that. What I read and reviewed was through
3 ECR I read plaintiff's motion for continuance and then
4 I did receive a response, a written response, from
5 plaintiffs to the motion and I have read that.

6 And then on ECR I read -- I mean, from
7 defendant, and then -- defendants and then on ECR I
8 also read plaintiff's reply.

9 So did you have anything else that you
10 wanted to add other than your written materials?

11 MR. CHEUNG: There's also a
12 declaration that included -- essentially it was just
13 all the discovery that we had -- that had so far, with
14 the defendants' responses.

15 THE COURT: Okay. All right. I did
16 not look at that, but I did read the motion alluding
17 to what discovery you had received.

18 So in terms of the motion, both
19 parties have acknowledged to continue in their written
20 materials, that under CR 56 it's discretionary whether
21 the court wants to continue or not. Having read all
22 of the materials, and understanding the issue that is
23 at hand, I'm going to deny the request.

24 And the reason why I'm going to deny
25 the request for continuance of the summary judgment is

1 basically in light of what the true issue is in this
2 case, and in light of plaintiffs basically arguing
3 they haven't had time to depose defendants, the court,
4 on the record that's before it, as far as the summary
5 judgment, can't -- doesn't have a reason to believe
6 that further discovery as far as propounding discovery
7 against the defendants is in any way going to resolve
8 the issue that essentially is before the court on the
9 summary judgment motion, because the issue on the
10 summary judgment essentially has to do with what
11 evidence plaintiffs have -- have propounded to support
12 their claims. So motion for continuance is denied.

13 And as to the motion for summary
14 judgment, the court received and reviewed plaintiff's
15 -- I'm sorry -- defendants' -- my notes -- defendants'
16 motion for summary judgment, reviewed the proposed
17 order, the declaration of Defendant Brown as well as
18 Exhibits A through Y.

19 And then in responsive materials --
20 oh, and then the court also later received and
21 reviewed the notice errata and the corrected Exhibit Q
22 and S.

23 Then the court in response received
24 the plaintiff's response to motion for summary
25 judgment, proposed order of denial, as well as the --

1 it's interesting. My working papers... Let me read
2 what I read. My notes don't have the printout from
3 the E working papers.

4 So what I can tell you is attached to
5 -- in addition to the motion, was an affidavit of
6 Bradley Luke and then there were five parts to Mr.
7 Luke's declaration -- I mean, affidavit, and the court
8 reviewed those.

9 Then in reply the court received and
10 reviewed the reply and the declaration of Sam Leonard
11 in support -- or motion for summary judgment, the
12 declaration of counsel in support and in reply, as
13 well as Exhibits 1 through -- I'm sorry. Then in
14 addition, the court received with that was a Westlaw
15 case of Saccameno versus Ocwen Loan Servicing, and I
16 have briefly read through that as well.

17 Is there anything that the court
18 should have received that you didn't hear mentioned by
19 the court?

20 MS. HENRY: No, Your Honor.

21 THE COURT: Anything the court should
22 have reviewed that you didn't have mentioned -- hear
23 mentioned by the court?

24 MR. CHEUNG: Nothing here.

25 THE COURT: Okay. All right. So

1 first, let's address -- before we get there, let's
2 address counsel's motion. Defense -- no --
3 plaintiff's motion to exclude the prior records from
4 the court that I believe were in defendants' working
5 papers. I want to say B through --

6 MS. HENRY: B through Y, Your Honor.

7 THE COURT: B through Y. Under the
8 evidence rules, public records generally -- well, it's
9 not really that much (unintelligible). In Washington
10 we have Evidence Rule 803, but it literally cites to
11 the statute that governs the admission of public
12 records, and that's RCW 5.44.010 and then 544.040.

13 Essentially, here in Washington,
14 public records and court records in proceedings of
15 court do not fall under the hearsay rule. And they
16 are admissible, but for them to be admissible as
17 public records they have to be certified copies. I
18 did not see anything that was included in any of the
19 declarations as far as prior court proceedings or
20 records for certified copies.

21 MS. HENRY: And Your Honor --

22 THE COURT: Did I miss that?

23 MS. HENRY: And Your Honor, I believe
24 that in our response we suggested that we would have
25 to supplement with that, if the court will allow us to

1 do that. I'm not sure that there's a question as to
2 them being authentic records, but we would request
3 that the court allow us to do that.

4 Definitely for the record that was
5 submitted from Delaware we did do everything to
6 support that record, and we also supported the
7 transcript with the attorney who had actually been on
8 that transcript.

9 THE COURT: I'm going to deny that
10 request. Honestly, for purposes of what I have read,
11 everything here, honestly, for purposes of that, I
12 don't necessarily feel that it's of such a nature that
13 I need to make a decision.

14 MS. HENRY: Okay.

15 THE COURT: So, and actually,
16 honestly, it should have been done without the court
17 having to do it. It's your motion. You brought it.
18 You should have provided the certified copy. So I'm
19 going to deny that request.

20 With that said, I think I have
21 addressed all of the preliminary matters. We
22 addressed the evidentiary issues. We addressed the
23 continuance. Did I miss anything else?

24 MR. CHEUNG: Sorry. Just for
25 clarification, which exhibits did you...

1 THE COURT: The court, any court, any
2 --

3 MR. CHEUNG: Court proceedings. Okay.

4 MS. HENRY: So Your Honor.

5 THE COURT: And in reply there was
6 also some more.

7 MS. HENRY: Your Honor, my question,
8 just to reiterate, is the CFPB action, are you also
9 requesting that that somehow be certified? It was --
10 there was further evidence that I attached as to how
11 it was obtained. It is obtained off of the court
12 website.

13 THE COURT: It's still -- okay. And I
14 understand that it's off the court website, but it's
15 still a noncertified copy.

16 MS. HENRY: Understood, Your Honor.

17 THE COURT: So, and so that's a
18 problem as far as admissibility under the statute,
19 so...

20 MR. CHEUNG: And as far as the
21 supplemental declaration of Ms. Henry with the
22 subsequent deposition transcripts and then the
23 declaration of Sam Leonard, they would fall under the
24 same rationale, that they're not certified copies and
25 therefore inadmissible?

1 THE COURT: The deposition
2 transcripts, she was there at the deposition, so she
3 can certify and they actually are -- had the copy of
4 the stamp. I believe they have the stamp. So for
5 deposition, for purposes of summary judgment, it's --
6 I don't find that to be excludable, the deposition
7 transcript.

8 MR. CHEUNG: Even though they're also
9 not filed with the original summary judgment? These
10 were offered in reply, so we have no opportunity to
11 respond to them?

12 THE COURT: I think that the -- if
13 it's -- let's make sure we're talking about the same
14 one. Are you referring to the transcript from the TSI
15 guy, who -- I can't remember his name.

16 MR. CHEUNG: Bradley Luke.

17 THE COURT: I have it -- Bradley. I
18 have it tabbed. I just need to get to the proper
19 page. Bradley Luke.

20 MR. CHEUNG: Correct.

21 THE COURT: Are you referring to him?
22 Well, that was in reply to plaintiff's argument that
23 Mr. Luke -- and Mr. Luke's declaration that he
24 provided, that he had the requisite knowledge too. So
25 it's their (unintelligible) in their reply, so...

1 MS. HENRY: So just to reiterate, Your
2 Honor, so the orders from the superior court judges
3 are out, the CFPB order is out, and then in the
4 supplemental declaration there was also a verified
5 complaint that was filed from Delaware.

6 THE COURT: Out.

7 MS. HENRY: That is out also, Your
8 Honor?

9 THE COURT: Well, it's sun -- I didn't
10 see that that was certified.

11 MS. HENRY: That -- that was verified,
12 and it is the only way to obtain it, from what I could
13 tell. So I included all the references --

14 THE COURT: You mean it's --

15 MS. HENRY: I included in Exhibit 3
16 all the --

17 THE COURT: Right. Case cites.

18 MS. HENRY: -- opportunities --

19 THE COURT: Two.

20 MS. HENRY: Yes. And I included all
21 the opportunities that we had to obtain it, how the
22 court told us to obtain it, and the actual verified
23 complaint that I obtained.

24 THE COURT: So I want to be very
25 clear. I saw that, and I don't understand how -- it

1 didn't make sense to me that you can't get a certified
2 copy from the federal court in Delaware. I didn't
3 understand how that -- this is how they certify, is to
4 ask you to print out a copy with the e-filed stamp?

5 MS. HENRY: Yes, Your Honor. If you
6 -- in Exhibit 3, I actually included the directions of
7 how they inform attorneys in the public to actually
8 obtain documents from their court.

9 THE COURT: And maybe I missed that in
10 Exhibit 3, because what I saw attached to Exhibit 3
11 was just an example of the printout that you were
12 arguing that what plaintiff's counsel is purporting to
13 be Schedule 2 is really just a printout from.

14 MS. HENRY: No, the next page,
15 actually, is the docket from that Delaware Chancery
16 court and it says specifically the docket and
17 pleadings in this case are available and it tells you
18 how to obtain them. And that's exactly what I did.

19 THE COURT: So still, it says that
20 it's the responsibility of file and Serve Express to
21 maintain the e-file. So are you telling me that you
22 can't contact Serve Express to get a certified copy?

23 MS. HENRY: This is the copy that I
24 was given, and understood that it was verified to the
25 best of my ability to obtain.

1 THE COURT: All right.

2 MS. HENRY: So otherwise, in the
3 future, I guess, you're telling me that I'm sending a
4 messenger or an attorney down there to see if there's
5 some other way to do it?

6 THE COURT: Well, the problem is the
7 top of it says not an official document.

8 MS. HENRY: Understood.

9 THE COURT: So that that's a problem.

10 MS. HENRY: Understood, Your Honor.

11 THE COURT: So, you know, without a
12 letter from the court saying that this is a certified
13 -- this is the best we can do. I mean, it literally
14 says right on the top, not an official document. That
15 means it's not certified. It's not certified, that
16 takes it out of being --

17 MS. HENRY: Okay.

18 THE COURT: -- admissible under the
19 RCWs. So, okay. Anything else we need to address?

20 MR. CHEUNG: I don't believe so.

21 THE COURT: All right. So this is
22 defendants' motion for summary judgment. So I will
23 give you each 10 minutes, beginning now.

24 MS. HENRY: Your Honor, we're here
25 today on behalf of defendants Osure Brown and Tommy

1 Brown. They were fi -- they were sued in 10 separate
2 lawsuits brought by trusts of National Collegiate
3 Student Loan Trust, and they were filed and served
4 with these lawsuits in April.

5 The defendants brought a motion to
6 consolidate the 10 lawsuits here to bring before this
7 court and also to defend against plaintiff's attempts
8 to arbitrate all 10 lawsuits separately.

9 When these lawsuits were filed, the
10 complaints were filed, and subsequent to that they
11 were filed affidavits by Jennifer Audet in each case.
12 I have attached those documents to my affidavit for
13 convenience of the court, since all 10 of those
14 lawsuits are before the court in the consolidated
15 matter.

16 Jennifer Audet testified in the
17 affidavits and attached various documents, and we are
18 challenging the sufficiency of their standing and
19 ability to bring these lawsuits on behalf of National
20 Collegiate Trust against our clients, Osure Brown and
21 Tommy Brown.

22 The essence of this lawsuit is that
23 TSI, who purports to be the subservicer for the
24 National Colligate Student Loan Trust, does not have
25 the requisite knowledge and the requisite authority to

1 present affidavits in support of the trust and the
2 information they have supported is hearsay.

3 It does not meet the qualifications of
4 RCW 5.45.020 as a business record, and they do not
5 have the ability to testify as to the loans of
6 defendants Tommy Brown and Osure Brown.

7 When this lawsuit was initially
8 brought, it's brought on behalf of the affidavits
9 filed in all 10 cases that include documents that
10 variously say loan request and credit agreement or
11 loan request, loan application and promissory note.

12 Either way, they purport to be
13 applications for loans, attached with documents that
14 are an unsigned note of some sort or credit agreement
15 of some sort and then an unsigned note disclosure
16 statement and then attached to a (unintelligible)
17 supplement documents, and attached to that, a note
18 disclosure statement or one other document, the
19 deposit and sale agreement from National Collegiate
20 Student Loan Trust.

21 We bring this to your court to note
22 that there is no evidence there that our clients'
23 notes are in these documents actually made it into the
24 trust. There's no assignment that has been proposed
25 to this court to show that the loan has actually been

1 moved from three or four different entities to
2 supposedly Transworld Trust, and that Transworld Trust
3 has the capacity to represent the trust against my
4 clients, the Browns.

5 Now, as the court is well aware,
6 responses were filed that changed the affidavits to
7 the affidavit of Bradley Luke, and included an
8 additional document in place of either Schedule 1 or
9 Schedule 2, depending on the loan, which is now an
10 excerpt that supposedly is an excerpt of some bigger
11 document that purports to be our loan.

12 It appears to be something that was
13 created for litigation purposes, it is not a business
14 record, and there's not been a foundation that Bradley
15 Luke has the requisite authority to testify.

16 As the court has acknowledged, I have
17 deposed Bradley Luke in a prior matter with these
18 trusts, and Bradley Luke, as described, does not have
19 the requisite knowledge and is -- and has also
20 testified that TSI is not a custodian of records,
21 actually, here, which I think is an important thing to
22 note.

23 Their entire affidavit is based on the
24 fact that they are custodian of records and that these
25 records have come into their files and they are

1 integrated in.

2 Now, Your Honor, I realize the case
3 law seems to be trending in that manner, but in a
4 situation as this, where their reliability and
5 trustworthiness is being questioned, where they have
6 been deposed, and they have actually admitted that
7 they actually do not have custody of these records,
8 they are retrieving them from some other entity who
9 has not been disclosed, has not been discussed here,
10 and because of that, I do not think that they have the
11 ability to actually testify in the broad strokes and
12 manner that some of the case law allows business
13 records to be admitted under RCW 5.45.020.

14 They do not -- they cannot testify to
15 the mode and preparation of documents under that
16 statute, and specifically we know from the testimony
17 that I provided as excerpts from the deposition that
18 they do not know about how those documents were
19 maintained.

20 We do not know how they were -- how
21 the retention was done, and they do not have the
22 knowledge to know that they actually are the documents
23 they purport to be, and we've objected to their
24 authenticity.

25 We also note, Your Honor, that

1 attached to Bradley Luke's affidavit appears to be
2 just SEC documents, things that were obtained off the
3 Web. We went to the Web and looked them up and we
4 could download them in Tegland too. I certainly can't
5 put them as an affidavit and attach them and say
6 therefore I have knowledge that this happened and that
7 appears to be what's done here.

8 If you look at each one of the
9 documents, they don't -- they're not all the same.
10 There's no evidence here of -- that they all purport
11 to the same loan. The first two pages, the credit
12 agreement and application, they appear to be in most
13 cases a fax in numbers of 2 through 3.

14 I think in my reply I noted
15 specifically the one loan in the lead case of
16 192-09402-8, that the facts there, you know, shows
17 that there are -- should be 3 of 5 pages and 4 of 5
18 pages, yet there only seems to be two pages here.

19 Then attached is another set of
20 documents which are unsigned and they purport to be
21 pages 3 through 7. I don't know how they relate or
22 whether they are the authentic documents or what they
23 are.

24 The no disclosure agreement presumes
25 to be the terms of the loan. So there's an issue here

1 too that the only document that talks about the
2 material terms of the loan, the actual amount,
3 interest or whatever else, also is not signed.

4 There's no evidence that it has ever
5 been mailed. There's no evidence that it was sent to
6 the school. There's no evidence that it was used for
7 an educational purpose. Yet all of those things have
8 been reported as true to this court, and we're asking
9 that this court look at them in detail and come to the
10 conclusion that the affidavits supporting this loan
11 are hearsay and that they cannot -- they cannot
12 actually come forward and prove this loan.

13 And with that, I will rest for the
14 moment and take any questions that the court might
15 have.

16 THE COURT: The court has no
17 questions. Counsel.

18 MR. CHEUNG: Thank you, Your Honor.
19 So as far as her characterization, which I believe is
20 a mischaracterization to say that Brad Luke has been
21 said he's not a custodian of records, I think she's
22 drawing her own legal conclusion based on statements
23 that he made.

24 I think Bradley Luke has been found to
25 be a custodian of records and the proper person to

1 testify on behalf of the trust in multiple cases, and
2 including ones in many other superior court
3 proceedings, even at trial, which we did a few months
4 ago.

5 So I think that's actually kind of
6 really misleading to say that, you know, his testimony
7 says that he's not able to testify.

8 I'm also a little concerned --
9 curious, like, why she's bringing so much about the
10 affidavit that was used in the default judgment.
11 That's not before the court. The affidavit in front
12 of the court is from Bradley Luke, and I think he has
13 laid a very proper foundation for why those business
14 records are indeed admissible.

15 So with regard to this motion, I mean,
16 I think it's the defendants' burden to, you know, to
17 really show that there's no issue of material fact.
18 And I think it's also -- I feel like a lot of the
19 arguments that she's using are to show that there --
20 are actually kind of contrary to what she's -- the
21 deposition she's taking, which is she stated there's a
22 question as to whether or not Bradley Luke can
23 testify.

24 Well, then maybe she should be putting
25 him on the stand and/or depose him. Or if it's -- I

1 think all she's doing is raising a lot of issues of
2 material fact, and in this case the court has to look
3 at the facts most favorable to the nonmoving party,
4 which is NCSLT.

5 So they keep on -- she's made a lot of
6 arguments that we've lacked -- we don't have the
7 docket -- the correct documentation, but, I mean, we
8 haven't received a single discovery request asking for
9 that documentation.

10 She made an initial mention that we
11 don't have Schedule 2 in her initial -- in her motion
12 for summary judgment, but this is before she even
13 asked us to produce that, which we did.

14 As far as whether or not -- again,
15 going back to this idea of admissibility, I think case
16 law's pretty clear that the objections that she makes
17 can go to the weight of the evidence and maybe the how
18 much credibility, how much weight that the court feels
19 Mr. Luke's testimony is, but not to the admissibility.

20 I think we can look at State v.
21 Ben-Neth, which is 34 Wn App 600, just to point out
22 that it's -- his testimony is admissible, and at the
23 very minimum, that creates an issue of material fact,
24 which would be a reason for the court to deny the
25 defendants' motion for summary judgment.

1 I mean, we've also just said that we
2 would also still like the opportunity to propound more
3 discovery and to really explain how (unintelligible)
4 chain of title. If you say there's no chain of title,
5 there's no standing. But one of the initial points
6 we're trying to make is that we do want to establish
7 that her clients did enter in these loans.

8 And she's -- I think the argument that
9 there's no chain of title is kind of premature, if her
10 clients won't even admit that this is indeed their
11 loan. Of course there's no chain of title, I guess,
12 if you say that -- if her clients won't even
13 acknowledge that the loans at issue in this case
14 aren't hers -- or aren't theirs.

15 So once we establish that, I think
16 then we can -- we could clearly show the link between
17 her loan, how it was transferred, and why it's with
18 the current plaintiff today.

19 And on that point I just want to point
20 out that, you know, she's made (unintelligible)
21 transfer from party to party, but it's actually a
22 fairly simple transfer. It was with the original Bank
23 of America, the original lender. It gets transferred
24 to NCSLT Trust through National Collegiate Funding,
25 which is really just a depositor in this, the

1 securitization process. They're like an escrow
2 company. That's it.

3 So we have Bank of America, we have
4 NCSLT trust. It goes straight there. It's not really
5 that complicated. This is done in one day, and it was
6 done before default, about a few months after each
7 loan is originated. I don't think the chain of title
8 is actually going to be very -- that complicated to
9 explain.

10 As far as whether or not she'll try to
11 say that Bradley Luke or someone at TSI can't testify
12 on behalf of the trust, I mean, she can make the
13 objection, but I think that he will be able to provide
14 a good foundation for his testimony to explain why the
15 documents are in the possession of -- you know, why
16 they're in the possession of TSI, why TSI can -- the
17 employee there actually knows how those documents are
18 -- how they were serviced, because TSI has the letter
19 that says they're the subservicer appointed by US Bank
20 of the trust. I think the documents kind of speak for
21 themselves.

22 As for -- and I guess that the court's
23 already (unintelligible) to the older stuff, so I'll
24 just leave out that. But I think that, you know, that
25 the burden is on her to show that there is no issue of

1 material fact. I think, based on what she's saying, I
2 think there's plenty of material facts for the court
3 to consider at this point.

4 THE COURT: Any reply?

5 MS. HENRY: Yes, Your Honor. I just
6 would clarify that my clients are Osure Brown and
7 Tommy Brown, both male defendants, so when I'm
8 speaking on their behalf, I'm speaking on -- speaking
9 about their loans or them as defendants.

10 And I would also note that the rules
11 clearly say that if there was an issue with the
12 supplemental declaration of Bradley Luke's deposition,
13 they could have challenged it or moved to strike it
14 and none of those -- none of those -- there was no
15 motion to strike made.

16 So Your Honor, that evidence is clear,
17 it impeaches Bradley Luke's affidavit. As plaintiff's
18 counsel has stated, they have replaced the affidavits
19 of Jennifer Audet with Bradley Luke, and Bradley Luke
20 is the deponent that we brought information to prove
21 that his evidence is not trustworthy.

22 He's not a proper affiant for business
23 records, and most importantly, he's testified that
24 they do not have custody of the records and does not
25 have information about the retention of the records

1 from any prior entity.

2 And on that basis, Your Honor, I do
3 not believe that they can go forward and we ask the
4 court that there are no materials of -- there are no
5 issues of material fact on those important, basic,
6 initial standing issues in bringing this lawsuit, and
7 we ask the court to enter summary judgment today.

8 THE COURT: Thank you. This matter
9 comes before the court on a motion by a defendants for
10 summary judgment. Summary judgment on Civil Rule 56,
11 both counsel have acknowledged that in might -- what
12 the court's responsibility in this matter is to view
13 the light -- to view the facts in light most favorable
14 to the nonmoving party, which in this case would be
15 the plaintiffs, and if there's no genuine material
16 issues of fact, then the moving party is entitled to
17 summary judgment.

18 In this case, defense is requesting
19 summary judgment, and as pointed out by counsel, in
20 moving paperworks the original documents did not
21 contain schedules as purported to be. Many of the
22 document -- many of the contracts were missing the all
23 important schedules, depending on the contract.
24 Sometimes it was referred to as Schedule 2, some
25 contracts, 3. I saw one contract where it was

1 actually referred to as Schedule 1.

2 And then, also, counsel for defendants
3 points out that the declaration from the custodian of
4 records initially was insufficient to establish
5 basically what we refer to in the criminal world as
6 chain of custody, but basically appropriate transition
7 from the original loan or orientation with Bank of
8 America to then the LLC to now the trust.

9 In response, plaintiffs attempted to
10 rectify that by supplementing the declaration of Mr.
11 Bradley Luke. And so the court points -- the court
12 finds it interesting that Mr. Luke's dec -- affidavit
13 tries to carefully and cautiously tailor what they
14 know -- what he knows, and the court finds it very
15 interesting that in Mr. Luke's declaration -- or
16 affidavit -- my pages aren't numbered, so I can only
17 refer to by paragraph -- it's very artfully crafted in
18 a very interesting language.

19 It says, defendants' educational loan
20 records at issue were created, compiled, and recorded
21 as part of a regularly conducted business activity at
22 or near the time of the event and from information --
23 and this is what the court finds interesting -- from
24 information transmitted from a person with personal
25 knowledge of said event.

1 Mr. Luke is not that person. In fact,
2 the court -- that's further supported by the fact that
3 he acknowledges in his deposition, which was taken by
4 counsel for defendants, that the information that he
5 did -- his employer TSI prints out is not from their
6 server. It's from another server, EA -- AES's, and
7 that he is not their custodian of records.

8 Further, more probable than not, that
9 he is not trained and has no knowledge of the document
10 retention policies for Bank of America, which is where
11 the loans originated from.

12 Without that information, there's no
13 way to verify -- verify that the documents upon which
14 Mr. Bradley -- I mean, Mr. Luke is relying upon are
15 actually the documents that they were purported to be
16 and that these liens are actually the loans that are
17 purported to be transferred to the trust at this point
18 in time.

19 As such, counsel is correct, counsel
20 for defendants is correct, as a matter of law the
21 defendants are entitled to summary judgment, and the
22 court will grant that.

23 MS. HENRY: Thank you, Your Honor.
24 And I have a -- I cleaned up the proposed order a bit.

25 MR. CHEUNG: Uh-huh.

1 (Unintelligible.) You changed it from the previous
2 one?

3 MS. HENRY: Your Honor, do you want to
4 add something to this or do you want us to?

5 THE COURT: No, the record -- the
6 court's record stands for itself, but even regardless,
7 it doesn't matter, because the Court of Appeals
8 reviews summary judgment de novo.

9 MS. HENRY: Okay.

10 THE COURT: So, I mean, I incorporate
11 my findings, but it's a de novo review for summary
12 judgment, so it's pretty much irrelevant. As long as
13 the court has identified the documents that the court
14 reviewed.

15 MS. HENRY: We should probably put in
16 there the documents were -- the evidence was stricken.

17 MR. CHEUNG: Yeah. (Unintelligible.)
18 Let's -- can we get this back? (Unintelligible) over
19 email and we'll get this back to you?

20 THE COURT: Absolutely, yeah, because
21 I did strike several documents.

22 MS. HENRY: Right. And we need to
23 make that clear on the record. Thank you, Your Honor.

24 THE COURT: Yeah. All right. So if
25 you want to submit that at a later time, that's fine.

1 MS. HENRY: For now, I'll give you a
2 copy.

3 (Proceedings concluded at 4:09 p.m.)

4 (END OF TRANSCRIPTION)

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TRANSCRIPTION CERTIFICATE

I, CHERYL J. HAMMER, the undersigned
Certified Court Reporter in and for the state of
Washington, do hereby certify:

That the foregoing transcript was
transcribed under my direction; that the transcript is
true and accurate to the best of my knowledge and
ability to hear the audio; that I am not a relative or
employee of any attorney or counsel employed by the
parties hereto; nor am I financially interested in the
event of the cause.

WITNESS MY HAND this 12th day of November
2019.



CHERYL J. HAMMER

Certified Court Reporter

CCR No. 2512

cheryl.hammer.courtreporter@frontier.com

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	want 8:5 12:24 23:6,19 29:3,4,25 wanted 5:10 wants 5:21 washington 1:1 2:5,9 8:9,13 31:5 way 6:7 12:12 14:5 16:12 28:13	

Washington State Court Rules

Rule CR 30

Depositions Upon Oral Examination

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for Examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in Form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the Witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness Is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the Officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign Together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under

Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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